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Trusts--Right to Reach A Spendthrift Trust For Maintenance of Minor Children

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certificate of incorporation provided that no dividends would be paid. The slight possibility that a subscriber would get back any part of his money was held not sufficient to deprive him of an otherwise proper deduction. *Commissioner v. The Hub, Inc.*, *supra*. To obtain needed supplies for its manufacturing business, taxpayer was required to purchase capital stock of the vendor corporation. Loss on resale of the stock was held a capital loss. The court said the record was too meager to indicate a purpose other than that of making an investment. *McGhee Upholstery Co.*, 12 CCH Tax Ct. Mem. 1455 (1953). The taxpayer had carried the stock in its accounts as "Securities." The opinion intimates that if the taxpayer had made clear an intent not to invest, the loss would have been allowed as a business expense.

Although the cases are not absolutely clear on this point, it would appear that in determining the applicable tax treatment, the courts will look at the transaction as a whole, considering the factors of intent, purpose, and tax and accounting treatment. In the instant case, the decision was financially beneficial to the taxpayer but as stated in the dissenting opinion, the rule would have the opposite effect if the asset increased in value during the time it was held. On resale, the increase would be taxed as ordinary income, not as a capital gain.

C. M. C.

TRUSTS—RIGHT TO REACH A SPENDTHRIFT TRUST FOR MAINTENANCE OF MINOR CHILDREN.—*T* set up a spendthrift trust for his son, *X*. *P*, *X*'s wife, in a divorce proceeding received custody of their children, and was awarded maintenance for their support. *X* did not pay as ordered and *P* now sues to reach *X*'s interest in the trust. The trust in question expressly stated that no assignment of trust funds would be valid and that neither the principal nor the income could be reached by process of attachment, garnishment, or other legal proceeding, while in the hands of the trustees. Held, that *P* was allowed to reach the trust proceeds. *Seidenberg v. Seidenberg*, 126 F. Supp 19 (D.D.C. 1954).

In the leading case in favor of a claim for maintenance against a spendthrift trust, the court said that maintenance of his family was a fundamental duty imposed upon a husband by obligations of humanity and the safety of society and that "property available for the purpose of pleasure or profit should be also answerable to the demands of justice". *In re Moorehead's Estate*, 289 Pa. 542, 137 A.2d 802 (1927).

Other courts have fallen line with the result of the Pennsylvania decision. *Safe Deposit & Trust Co. v. Robertson*, 192 Md. 653, 65 A.2d 292 (1948) ("... the wife is a favored suitor and her claim is based on the strongest grounds of public policy."); *Zouch v. Zouch*, 204 Md. 285, 104 A.2d 573 (1954); *Marsh v. Scott*, 2 N.J. Super. 240, 63 A.2d 275 (1949); *In re Randolph's Will*, 159 Misc. 688, 288 N.Y. Supp. 678 (Surr. Ct. 1936); *Dillon v. Dillon*, 244 Wis. 122, 11 N.W.2d 268 (1943) (quoting at length from *In re Moorehead's Estate*, *supra*); *Cogswell v. Cogswell*, 178 Ore. 417, 167 P.2d 324 (1946); *Seattle First Nat'l Bank v. Crosby*, 42 Wn. 2d 234, 254 P.2d 732 (1953). Three basic reasons seem to be favored by these courts. They are: (1) public policy favors the claimants, (2) the wife and children are implied cestuis unless expressly excluded by the trust provisions, and (3) such claims are superior to ordinary debts and therefore are not the type of debt the trust is to protect. See Note, 28 VA. L. REV. 527 (1942).

On the other hand, several courts have held that the basic reason for upholding spendthrift trusts is that a donor can dispose of his property as he pleases, and this by necessity bars any claim against the trust. The donor in a spendthrift trust wants the beneficiary to enjoy the trust income without liability to creditors. These courts say the wife and children seeking support and maintenance are not superior to any other creditor. They reason that the wife and children are not worsened by the creation of the spendthrift trust. *Burrage v. Bucknam*, 301 Mass. 235, 16 N.E.2d 705 (1938); *In re Bucklin's Estate*, 243 Iowa, 312, 51 U.W.2d 412 (1952); *Erickson v. Erickson*, 197 Minn. 71, 266 N.W. 161 (1936); *Bank v. Heustis*, 121 Cal. App. 675, 10 P.2d 158 (1932).

Some courts will not allow alimony claims against a spendthrift trust but will allow maintenance and support claims of the wife. *Lippincott v. Lippincott*, 349 Pa. 501, 37 A.2d 741 (1944); *Eaton v. Eaton*, 82 N.H. 216, 132 Atl. 10 (1926).

Pennsylvania, Missouri, Louisiana, and Oklahoma have passed statutes which make all provisions of a spendthrift trust void as against a wife or children seeking maintenance and support. PA. STAT. ANN. tit. 20, § 301.12, tit. 18, § 4733 (Purdon, 1945); MO. REV. STAT. § 456:080 (1949); LA. REV. STAT. § 9:1923 (1950); OKLA. STAT. ANN. tit. 60, § 175:25 (1951).

The *Restatement* favors the wife or child of the beneficiary in support claims and the wife in alimony claims against a spendthrift trust. See 1 *RESTATEMENT, TRUSTS* § 157, comment *a* (1935).

It should be noted that regardless of reasons given in the

cases, the results show either a desire to recognize limitations on the generality of spendthrift trusts or else to construe them strictly. In the absence of legislation on the matter, it has been suggested that courts should recognize the strong humanitarian element involved in these cases, and the fact that a beneficiary's living expense includes the expense of supporting his family, which will enable the courts to allow such claims against a spendthrift trust. See 1A BOGERT, TRUSTS & TRUSTEES § 223 (1935).

At best, a valid spendthrift trust represents a relaxation of the policy of the law to prevent unreasonable restraints on alienation of property. To permit such restraints calls for reasonable limits. Courts should realize that it is unreasonable to restrict alienation of property so as to preclude a beneficiary's wife and children from obtaining maintenance and support. The spendthrift trust provisions should be kept within reasonable bounds. See 1 SCOTT, LAW OF TRUSTS §§ 152, 153, 157 (1939).

G. H. W.